

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

JUNCTION ELEMENTARY SCHOOL
DISTRICT, COLUMBIA ELEMENTARY
SCHOOL DISTRICT, CHRYSALIS
CHARTER SCHOOL, AND NORTH COW
CREEK SCHOOL DISTRICT.

OAH CASE NO. 2012110685

ORDER GRANTING MOTION TO
BIFURCATE AND SETTING DATES
FOR EVIDENTIARY HEARING

On May 3, 2013, Junction Elementary School District (Junction), Columbia Elementary School District (Columbia), Chrysalis Charter School (Chrysalis) and North Cow Creek School District (North Cow Creek) filed with the Office of Administrative Hearings (OAH) a joint motion to bifurcate issues related to the statute of limitations.¹ Respondents claim that any claim arising prior to April 4, 2013, the date Student filed his amended complaint, is time barred due to the two-year statute of limitations. OAH has not received a response from Student.

APPLICABLE LAW

The statute of limitations in California was amended, effective October 9, 2006, and is now two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see 20 U.S.C. § 1415(f)(3)(C).) However, title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (l), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or the local educational agency's withholding of information from the parent that was required to be provided to the parent. These two narrow exceptions to the Individuals with Disabilities Education Act's (IDEA) statute of limitations require factual determinations that can only be made after giving parties an opportunity to develop the record.

¹ All parties agreed to extend time to May 13, 2013 for any response by Student.

Other than pursuant to the grounds specified in Education Code section 56505, subdivision (l) and United States Code, title 20, section 1415(f)(3)(C) & (D), the courts have disfavored tolling of claims under the IDEA. The Ninth Circuit Court of Appeals held that claims under the Education for Handicapped Act (EHA), predecessor to the IDEA, were not tolled prior to pupils reaching the age of majority, because tolling would undercut the federal policy of assuring that representatives of disabled children promptly assert the children's educational rights. (*Alexopoulos v. San Francisco Unified School District* (9th Cir. 1987) 817 F.2d 551, 555-556 (*Alexopoulos*); see *Strawn v. Missouri Bd. of Educ.*, (8th Cir. 2000) 210 F.3d 954, 958.)

A claim accrues for purposes of the statute of limitations when a parent learns of the injury that is a basis for the action. (*M.D. v. Southington Board of Educ.* (2d Cir. 2003) 334 F.3d 217, 221; *M.M. & E.M. v. Lafayette School Dist.* (N.D.Cal., Feb. 7, 2012 Nos. CV 09–4624, 10–04223 SI) 2012 WL 398773, ** 17 - 19.) In other words, the statute of limitations begins to run when a party is aware of the facts that would support a legal claim, not when a party learns that it has a legal claim. (See *El Pollo Loco, Inc. v. Hashim* (9th Cir. 2003) 316 F.3d 1016, 1039, citing *April Enter., Inc. v. KTTV and Metromedia, Inc.*, (1983)147 Cal.App.3d 805, 826 [195 Cal.Rptr. 421] (“[I]n ordinary tort and contract actions, the statute of limitations ... begins to run upon the occurrence of the last element essential to the cause of action. The plaintiff's ignorance of the cause of action ... does not toll the statute.” [citation omitted]).)

Federal and state law pertaining to special education due process administrative proceedings do not contain specific references to the procedure for bifurcating issues at trial. Such authority resides in the discretion of the administrative law judge, provided the separate hearings are conducive to judicial economy or efficient and expeditious use of judicial resources. (See Gov. Code, § 11507.3, subd. (b).)

DISCUSSION

Student's Issue One alleges that North Cow Creek denied him a free appropriate public education (FAPE) during the 2008-2009, 2009-2010 and 2010-2011 school years, and that Columbia denied him a FAPE during the 2010-2011 school year. Respondents contend these specified time frames fall outside the two year statute of limitations as Student's amended complaint was deemed filed on April 4, 2013.² Student's complaint alleges that an exception to the statute of limitations applies in that both North Cow Creek and Columbia failed to provide Parents with a notice of their procedural safeguards and that Parents were not aware of their rights until the 2012-2013 school year.

² Student's original complaint naming only Junction was deemed filed on November 26, 2012, as it was received after 5:00 p.m. on November 21, 2012, and OAH was closed on November 22-23, 2012. This Order makes no determination as to the effective date from which to determine the statutory time frame.

Congress intended to obtain timely and appropriate education for children with special needs and did not intend to encourage the filing of claims under the IDEA many years after the alleged wrongdoing occurred. (*Alexopoulos, supra*, 817 F.2d 551, 555-556.) An extended delay in filing for relief under the IDEA would frustrate the federal policy of quick resolution of such claims. In general, the law provides that any request for a due process hearing shall be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (Ed. Code, § 56505, subd. (1); 20 U.S.C. §1415(f)(3)(C). See also, *Draper v. Atlanta Ind. Sch. System* (11th Cir. 2008) 518 F.3d 1275, 1288.) In effect, this is usually calculated as two years prior to the date of filing the request for due process.

Generally OAH will only bifurcate a hearing when the resolution of a threshold question will determine whether pending issues remain to be determined. In such a situation, bifurcation furthers judicial economy. Whether either exception to the statute of limitations applies in this case is a threshold jurisdictional issue which can be efficiently resolved in a bifurcated evidentiary proceeding. The prompt determination of this issue would potentially further judicial economy by reducing or eliminating the number of witnesses, and the time for witness examination and cross-examination on issues related to Student's claims, if it is determined that an exception to the statute of limitations does not apply. Accordingly, the motion to bifurcate is granted.

ORDER

1. The motion to bifurcate is granted. The bifurcated hearing shall focus exclusively as to issues relating to North Cow and Columbia which fall beyond the statutory time frame.
2. The currently calendared dates of a prehearing conference (PHC) on May 22, 2013, and a due process hearing, starting on May 30, 2013, shall now be the dates applicable to the evidentiary hearing on the preliminary issue. The substantive due process hearing on the remaining issues is continued. The parties shall be prepared to discuss calendaring of the substantive hearing at the May 22, 2013 PHC.

Dated: May 17, 2013

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings